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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MICHAEL KRAUSE,

Petitioner,

VS.

TARA KRAUSE,

Respondent.

Case No.: 1:21-cv-01706-JLT-SAB

RESPONDENT'S RESPONSE TO MOTION TO DISMISS

Evidentiary Hearing: May 25, 2022 (3 days)

Time: 9:00 a.m.

Courtroom: 9 (SAB)

Respondent Tara Krause, by and through her attorney, Drexwell M. Jones, hereby responds to Petitioner's motion to dismiss.

I. BACKGROUND FACTS

Petitioner’s declaration supporting his motion to dismiss is extremely telling, not because of what is stated, but for what is missing. On May 12, 2022, Lt. Col. Michael Krause received orders to start a new assignment at Beale Air Force Base in California, starting on June 30, 2022. (Declaration of Drexwell M. Jones in Support of Respondent’s Response to Motion to Dismiss (hereinafter “Jones Decl.”), ¶ 2.) Petitioner suggests in his declaration that this “opportunity presented itself, on or around May 12, 2022.” (Krause Declaration, ¶ 8.). He is forced to acknowledge he contemplated a move to Beale Air Force Base earlier in the year but abandoned the effort. (Krause Decl., ¶¶ 2-4.) Absent from Lt. Col. Krause’s declaration are specific dates of what he knew and when he knew it. This is because Lt. Col. Krause’s declaration is inaccurate. The reality is that Mr. Krause has known for some time he is headed to Beale

1 Air Force Base and has actively concealed this information. In response in Respondent's discovery on this
2 issue, Petitioner was evasive. (Jones Decl., ¶ 3.), In verified responses to request for admissions, Lt. Col.
3 Krause claimed as of February 3, 2021, he could neither admit nor deny his contemplation of taking his
4 next assignment in the United States. (Id.) Mr. Krause sought to conceal his assignment to Beale Air Force
5 Base because he has hoping to complete his Hague Convention case prior to his new assignment becoming
6 an issue. Michael Krause never had any intention of commencing a custody proceeding in Germany, the
7 primary aim of the Hague Convention. Instead, he kept his Hague Convention case going to exert pressure
8 on Respondent in their "global settlement" discussions. (See Krause Decl., ¶ 2.)

9 Lt. Col. Krause's declaration leaves out the fact that he knew in early May that he was headed to
10 California, such that he could provide notice to the property manager of his house that he was breaking his
11 lease early. (Declaration of Tara Krause in Support of Respondent's Response to Motion to Dismiss
12 (hereinafter "Tara Decl.", ¶¶ 3-4.) The rental property manager listed Mr. Krause's house in Germany as
13 early as May 3, and perhaps even earlier. (Id.)

14 Lt. Col. Krause also failed to inform Respondent or his children he was headed back to California,
15 until confronted with Respondent's motion to continue the evidentiary hearing date and open discovery.
16 His declaration leaves out his new position at Beale Air Force Base is the "Director of Operations" for Lt.
17 Col. Mikita Brown, call sign "Foxy." Lt. Col. Mikita Brown knew as early as April 22, 2022 that Lt. Col.
18 Krause, call sign "Sour" was going to be her "DO." (Tara Decl., ¶¶ 4-6.)

19 Lt. Col. Krause leaves out from this declaration that he has coveted a DO position for approximately
20 ten years and that this assignment is an important step to becoming a Colonel (rank O-6). (Tara Decl., 10)

21 Finally, Lt. Col. Krause leaves out of his declaration the general process of how Air Force
22 assignments are obtained. Generally, the request and determination of a new assignment in the Air Forces
23 is a four-to-six-month process. (Tara Decl., ¶¶ 8-9) And, by the time the Permanent Change of Station
24 orders are issued, the determination has been made for months. Lt. Col. Krause fails to articulate in any
25 detail why or how the process worked differently in his case.

26 Instead, Lt. Col. Krause expects the court to believe days before May 12, 2022, the Air Force
27 provided him the opportunity to go to Beale. Like Lt. Col. Krause's April 15, 2022 declaration supporting
28 his request to appear at the evidentiary hearing by video, Mr. Krause's declaration supporting the present

1 motion lacks veracity. In truth, Mr. Krause has prosecuted this case since January knowing he was headed
2 to Beale Air and the primary remedy of the Hague Convention was impossible, ineffectual, and moot.

3 Respondent has spent over \$83,220 in attorney fees defending her case. (Jones Decl., ¶ 4.) Since
4 February 3, 2022, Respondent has spent 75,229 in attorney fees. (Jones Decl., ¶ 5.)

5 II. LEGAL ANALYSIS

6 A. The Court is Authorized to Condition Dismissal on an Award of Attorney Fees and Cost.

7 FRCP Rule 41(a)(2) provides:

8 (2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be
9 dismissed at the plaintiff's request only by court order, on terms that the court
10 considers proper. If a defendant has pleaded a counterclaim before being served
11 with the plaintiff's motion to dismiss, the action may be dismissed over the
defendant's objection only if the counterclaim can remain pending for independent
adjudication. Unless the order states otherwise, a dismissal under this paragraph (2)
is without prejudice.

13 USCS Fed Rules Civ Proc R 41. "The defendants' interests can be protected by conditioning the
14 dismissal without prejudice upon the payment of appropriate costs and attorney fees." *Westlands Water*
15 *Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). Respondent believes Petitioner's case should be
16 dismissed with prejudice because the Air Force has permanently assigned Lt. Col. Krause to Beale Air
17 Force Base in California starting on June 30, 2022. Respondent requests, however, the court condition
18 dismissal on an award of her attorney fees and cost as "terms the court considers proper." Petitioner's
19 declaration that suddenly on or about May 12, 2022 he received orders to serve at Beale Air Force base
20 starting in June 2022 is simply unbelievable. The clear inference is that he hid his new assignment and
21 continued his petition knowing it was moot. Only after Respondent obtained circumstantial evidence of
22 his new assignment, did he admit to it. Had Petitioner been forthcoming regarding his new assignment,
23 Respondent might reasonably believe Lt. Col. Krause sometime after commencing his Hague Convention
24 proceeding had a change on heart and decided to move to California to be with his children. But the fact
25 Petitioner attempted to conceal facts, evade discovery questions, and only admitted to knowing he was
26 coming to California on or about May 12, 2022, when his orders were signed, leads to conclusion he
27 maintained this action in bad faith and forced Respondent to accumulate thousands of dollars in
28

1 unnecessary attorney fees and costs because he desired her to accept a “global settlement” regarding the
2 division of their marital assets.

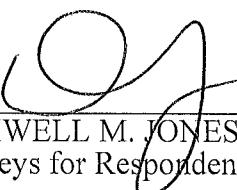
3 **III. CONCLUSION**

4 Therefore, Respondent asks the Court to dismiss Petitioner’s case with prejudice and to award her
5 attorney fees and costs.

6 Dated: May 24, 2022.

LAW OFFICES OF BRUNN & FLYNN
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7 By:

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9 DREXWELL M. JONES
10 Attorneys for Respondent, TARA KRAUSE

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